

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on February 15, 2001 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Sam Kitzenberg (R)
Sen. Gerald Pease (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Jerry O'Neil (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJ 6, 2/13/2001; SB 447,
2/13/2001; SB 355, 1/31/2001;
SB 393, 2/15/2001
Executive Action: SJ 6; SB 355; SB 447; SB 393

HEARING ON SJ 6

Sponsor: CHAIRMAN ARNIE MOHL, SD 39, KALISPELL

Proponents: Gary Gilmore, MDT
Col. Bert Obert, Montana Highway Patrol, DOJ

Opponents: None

Opening Statement by Sponsor:

SEN. ROBERT DEPRATU, SD 40, WHITEFISH, who presented SJ 6 for **CHAIRMAN ARNIE MOHL**, opened by saying that it was brought forth to direct an interim committee to study and revise traffic codes to provide clarity and uniformity. These revised codes should then be presented within a bill to the 58th Legislature for consideration. He pointed out that the traffic codes on the books had not been examined for quite some time and was sure that some of them were not applicable to today's traffic situations. He asked for passage and sufficient funding to make this study possible.

Proponents' Testimony:

Gary Gilmore, MDT, stated that the department had asked for this resolution because there is a significant number of existing traffic laws that are ambiguous, and because they contain numerous differences between existing uniform vehicle code. To illustrate how old these codes were, he cited a passage that refers to traffic lights required to have the words "stop" and "go" on them, and other situations that no longer apply. There is also missing language which would prohibit motorized vehicles on bike lanes and said this would create problems for law enforcement. He stated these are but a few of the ambiguities and differences which currently exist between the MCA and the Manual on Uniform Traffic Control Devices which Montana had adopted as its guide to traffic control. Many of the differences make it difficult for law enforcement to properly interpret the law, and many other users of these codes are equally confused. In closing, he said that the Department of Justice, local and municipal governments, and the Department of Transportation all ask for approval of this resolution as it is in the best interest of the state of Montana and its citizens.

Col. Bert Obert, Montana Highway Patrol, repeated that there are some ambiguities in the statutes. He said that law enforcement officers try to understand the intent of a law but ordinary citizens need to be able to read and understand it as well so they can abide by it, and that was why it was so important to get this study under way.

Closing by Sponsor:

SEN. DEPRATU closed on SJ 6.

HEARING ON SB 447

Sponsor: SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, GREAT FALLS

Proponents: Col. Bert Obert, Montana Highway Patrol, DOJ
Susan Court, self

Opponents: Aimee Grmoljez, Verizon Wireless
Mark Baker, AT&T Wireless
Tom Ebzery, Qwest
SEN. VICKI COCCHIARELLA, SD 32, MISSOULA

Opening Statement by Sponsor:

SEN. CHRIS CHRISTAENS, SD 23, GREAT FALLS, mentioned in his opening that some of his proponents had been unable to come because of winter weather road closures. He stated that SB 447 would prohibit the use of hand-held communication devices while operating a motor vehicle on a public road. It provides an exception for devices that have a headset attached to the vehicle body or the driver. He cited several instances where accidents happened or almost happened when the drivers' attention was diverted because they were using their cell phones. The use of a hand-held device also impedes the driver because it leaves him with only one hand on the steering wheel. Referring to upcoming testimony, he offered **EXHIBIT (his38a01)**, a letter from a constituent. He stated that cell phone use is on the rise since more and more people conduct personal calls now whereas in the past, they were mainly reserved for business. He also passed out an amendment (handwritten due to the computer outage), **EXHIBIT (his38a02)** which provides some exceptions, such as for an emergency situation. This would allow a driver witnessing an accident or a crime to call "911" on his cell phone. The sponsor then stated that due to the unavailability of the necessary accessories to bring older cell phones into compliance, he changed the effective date of the bill.

Proponents' Testimony:

Col. Bert Obert, Montana Highway Patrol, agreed with SEN. CHRISTIAENS with regards to the problems caused by drivers using cell phones. He said driving is a serious matter and warrants full attention, and oftentimes cell phone users display the same driving behavior as drunk drivers. He was concerned about the language in the bill, referring to electronic communication devices, and felt this would include two-way radios, CB's and other types of communication which ambulances, fire trucks and law enforcement officers use. For them it would not be feasible to "stop and talk". He hoped SB 447 would not ban these devices

because it would seriously affect response time and the effectiveness of law enforcement and fire fighters.

Susan Court, self, referred to her letter which is marked Exhibit (1). She related the incident which prompted her to write the letter and said she received assurances that cell phone use would be a topic in future training sessions for highway patrolmen. She posed the question to what degree cell phone use would distract a normal driver when a patrolman with highly developed driving skills, due to extensive training, could be distracted so easily.

Opponents' Testimony:

Aimee Grmoljez, Verizon Wireless, stated that her company was concerned that the time frame in SB 447 was not enough to upgrade some of the older communication devices. If this legislation was implemented after January 1, 2002, they would support it as they do the responsible use of cell phones while driving, but if the effective date was earlier, they would have to stand in opposition.

Mark Baker, AT&T Wireless stated that the real issue was not cell phone use but inattentive driving, and the cause of this could be manifold. He pointed to different scenarios, such as changing a cassette tape or CD, reaching for a dropped object, or even using a hands-free device on a cell phone when dialing, which would distract a driver or cause him to take one hand off the steering wheel. He further stated that this legislation was technology specific, identifying one device and prohibiting its use, and he would like to see infractions dealt with under the careless or reckless driving laws.

Tom Ebzery, Qwest, stated that even though the sponsor's intentions were laudable, Qwest opposed SB 447. He felt people should be educated in the safe use of cell phones while driving rather than having more laws and regulations added to the books. He agreed that this was an emotionally charged issue but it was wrong to place the blame for car accidents on the cell phone. He concurred with **Mr. Baker** that this would be better addressed through the reckless and careless driving laws which already include cell phone use as well as eating and changing cassettes and the like while driving. He also mentioned the difficulty in enforcing this law, having patrol officers watching for people who have their hand up near their ear which could mean any number of things.

SEN. VICKI COCCHIARELLA, SD 32, MISSOULA, informed the committee of a letter one of her constituents wrote to her a month before

the session in which he voiced his adamant opposition to this bill. This constituent wrote that the risk in attending to children in safety restraints in the back seat of a car was probably greater than that of using a cell phone. Moreover, given the multitude of causes of distraction in a car, it should also be made illegal to eat or drink in a car, tend to children, especially if they are in the back seat, and all forms of entertainment should also be banned. She admitted she was exaggerating, and referred to the careless driving laws on the books where all this was covered, saying people did not need any more intrusion into and regulation of their lives. She maintained people should be allowed to be personally responsible for what they do.

{Tape : 1; Side : B; Approx. Time Counter : 0}

CHAIRMAN MOHL invited the sponsor to explain the amendments to SB 447, Exhibit (1).

SEN. CHRISTIAENS read through the amendments.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA felt there was a major conflict in the bill and asked to have the language on page 1, line 17 explained, where it says "may not use or hold ready for use", and line 22, "does not require the operator to use one or both hands for speaker use".

SEN. CHRISTIAENS replied that adding the amendments may have put things out of context, but the intent of the bill was to disallow use of hand-held cell phones while operating a motor vehicle, except in an emergency situation. He asked **Connie Erickson** to see whether there was in fact a conflict. **Ms. Erickson** answered that the conflict did not occur in the amendment, it would be in the way the bill was drafted, but that she did not see a conflict in the way the bill was written. **SEN. COCCHIARELLA** again referred to subsection (3) where it says when the speaker is attached to the dash, it does not require that both hands are on the steering wheel which stands in conflict with line 17 as above. **SEN. CHRISTIAENS** said all he was trying to say that while a person is operating a vehicle, he may not use a hand-held device. If it is attached to the dash, or if the person has a headset, then he may use it while driving. He said that if it rings, one would momentarily reach over and push a button to activate it, just like one would push in a cigarette lighter.

SEN. COCCHIARELLA wondered what the purpose of section 3 was in light of this. **SEN. CHRISTIAENS** replied it was his understanding that both sections needed to be in the bill, but he would not be opposed to amend one section out as long as it remained clear that one could only use a phone with an installed phone or headset while driving. **SEN. ROUSH** asked if an officer indicated in his report whether an accident was caused because the driver had been using a cell phone. **Col. Obert** explained that in the

last six months, the crash report forms have been revised and cell phone use is listed under the category of contributing factors. **SEN. COCCHIARELLA** wanted to know that since officers were tracking cell phone use as the cause of accidents, did they also distinguish between people tuning their radios or popping in a cassette, or any other activity. **Col. Obert** said they did not track these separately but under careless or reckless driving, or inattentive driving. **SEN. COCCHIARELLA** wanted confirmation that these activities were tracked, and **Col. Obert** said they did not keep specific track of whether the contributing factor was tending to the radio or a CD player, eating or taking care of a child; in the violation report, these things are lumped together. **SEN. COCCHIARELLA** then wanted confirmation that there was a law in place enabling an officer to issue a ticket for careless or inattentive driving, and **Col. Obert** said that there was. **CHAIRMAN MOHL** asked how difficult it would be to prove cell phone use if the driver was to lie about it. **Col. Obert** replied that it would be similar to enforcement concerns he had with the seatbelt use, and the officer would have to use his judgment. **CHAIRMAN MOHL** said he had a problem with officers pulling people over on narrow roads for this small an infraction. **Col. Obert** answered the officers would determine whether it was safe or to let it go. They still had the option, in some cases, to have another officer down the road make the stop.

Closing by Sponsor:

SEN. CHRISTIAENS closed on SB 447 and said the city of Great Falls was considering an ordinance regarding this, as well as other self-governing cities across Montana, and that he brought this bill forth to assure consistency of law across the state.

EXECUTIVE ACTION ON SJ 6

Motion/Vote: **SEN. DEPRATU** moved that **SJ 6 DO PASS**. Motion carried 9-0, with **SEN. ROUSH**, who stepped out, voting aye by proxy.

HEARING ON SB 355

Sponsor: **SEN. WILLIAM "BILL" CRISMORE, SD 41, LIBBY**

Proponents: **Rich Tatarka, Montana Logging Association**
Col. Bert, Obert, Montana Highway Patrol
Barry "Spook" Stang, Montana Motor Carriers' Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. BILL CRISMORE, SD 41, LIBBY, opened by saying SB 355 effects changes and clarifications with regards to wrappers used to secure logs on log trucks. The industry has evolved and has come up with better chains and cables but the language in the statute has remained the same, causing problems for the drivers at the scales.

Proponents' Testimony:

Rich Tatarka, Log Hauler, Montana Logging Association, explained that since 1954 when the law in its present form was enacted, the industry has gotten away from the 3/8" chain, and is using a smaller but stronger one, which is also lighter. He proceeded to show the committee what sort of unit was called a wrapper, which is a 3/8" cable attached to a 5/16" chain. He went on to say that there is no mention of working load limits or strength, just the outdated 3/8" chain, and he pointed out that a 3/8" chain has a working load limit of 2,400 pounds whereas the 3/8" cable has a working load limit of 3,000 pounds and the 5/16" chain one of 3,900 pounds. He repeated this change of the old statute was very necessary, and pointed out that the language would be cleared up as well to conform to industry practices.

Col. Bert Obert, Montana Highway Patrol, repeated that SB 355 does clarify the language by removing the 3/8" chain requirement, and he felt this did improve the safety factor. It also made it easier for the log truck driver who has to toss them over the top of his load before securing them since the new wrappers are lighter. To illustrate his point, he offered **EXHIBIT(his38a03)** and **EXHIBIT(his38a04)**.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Barry "Spook" Stang, Montana Motor Carriers' Association, also rose in support of SB 355.

Closing by Sponsor:

SEN. BILL CRISMORE closed on SB 355.

EXECUTIVE ACTION ON SB 355

Motion/Vote: **SEN. HARRINGTON** moved that **SB 355 DO PASS**. Motion carried 9-0.

EXECUTIVE ACTION ON SB 447

Motion: SEN. DEPRATU moved that SB 447 DO PASS.

Substitute Motion/Vote: SEN. COCCHIARELLA made a substitute motion that SB 447 BE TABLED. Substitute motion carried 9-0.

HEARING ON SB 393

Sponsor: SEN. FRED THOMAS, SD 31, STEVENSVILLE

Proponents: Clint Blackwood, Lewis & Clark Bicentennial Commission
Dean Roberts, Department of Justice, MVD
Arnie Olson, Montana Historical Society
Stuart Doggett, Montana Innkeepers
Amy Sullivan, Montana Tourism Coalition

Opponents: None

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, STEVENSVILLE, opened by saying that SB 393 allows for the issuance of special Lewis & Clark license plates to help fund bicentennial activities. He believed that this program would be very successful and aid in the planning of many activities for the expected influx of tourists. The proposal will be effective upon passage and approval.

Proponents' Testimony:

Clint Blackwood, Lewis & Clark Bicentennial Commission, handed out a map depicting the trail system in Montana **EXHIBIT (his38a05)**, and informed the committee that the bicentennial would start on January 18, 2003, meaning that time was of the essence in getting funding to the various groups to start their work. He explained that the trail system stretches for almost 2,000 miles, and runs through or is adjacent to 36 counties, making this almost a state wide effort. The visitation estimates are wide-ranging, and the strategic master plan for the activities mentions between four million and eight million additional non-resident visitors. He went on to say that numerous communities have gotten organized and have identified

projects, and adequate funding is crucial to their preparations. He referred to the back page of Exhibit (5), which summarizes the financial needs for the proposed projects. He stated that if SB 393 is passed, the plates would go on sale on January 1, 2002, and the monies could be funneled to the organizations shortly thereafter. He also pointed out that these plates are not the only funding mechanism for the bicentennial, but was hopeful they would be a significant contributor.

Dean Roberts, Department of Justice, Motor Vehicle Division, stated that his department has worked with the commission on drafting this bill and supports the concept.

Arnie Olsen, Director, Montana Historical Society, handed in written testimony **EXHIBIT**(his38a06) .

Stuart Doggett, Montana Innkeepers, also rose in support of SB 393, adding that the accommodations tax is currently funding the Lewis & Clark Commission, and he welcomed any additional funding for this worthwhile effort.

Amy Sullivan, Montana Tourism Coalition, lauded SB 393 as being another component in establishing funding for this big event.

Questions from Committee Members and Responses:

SEN. ROBERT DEPRATU asked the sponsor if he had any objections to an amendment adding coordinating language to SB 191. **SEN. THOMAS** replied he would be agreeable to this but pointed out that SB 393 was effective upon passage and approval whereas **SEN. DEPRATU'S** SB 191 was effective the first of the year. **SEN. COCCHIARELLA** wondered if these plates would have to be as boring as the current ones, to which **Dean Roberts** replied no, the department was not designing them. **CHAIRMAN MOHL** asked for clarification on the fiscal note. **Dean Roberts** explained that it was designed so that people pay the normal license plate fee, plus the \$25 for a specialty plate; \$5 of this is used for administrative expenses for county and state, and \$20 go to the Historical Society for the bicentennial efforts, so there is no impact to the taxpayer.

Closing by Sponsor:

SEN. FRED THOMAS closed on SB 393 and explained that of the \$25 fee, \$3 goes to the state, namely the Department of Corrections.

EXECUTIVE ACTION ON SB 393

Motion: SEN. HARRINGTON moved that SB 393 DO PASS.

Ms. Erickson mentioned Amendment#SB039301.alk, **EXHIBIT(his38a07)**.

Motion: SEN. COCCHIARELLA moved that AMENDMENT TO SB 393 BE ADOPTED.

Discussion:

Ms. Erickson explained that the amendment removes the requirement that 700 plates be pre-paid before they are manufactured. **SEN. DEPRATU** mentioned that current statute puts the minimum at 400 plates, and **Dean Roberts** confirmed that either \$1,200 has to be paid up front or a minimum of 400 plates pre-paid. **SEN. DEPRATU** recommended the amendment because it brought the bill in line with present statute.

Vote: Motion carried 9-0.

Motion: SEN. MOHL moved that SB 393 DO PASS AS AMENDED.

Discussion:

SEN. COCCHIARELLA suggested a coordinating clause to tie SB 393 to SB 191 with regards to the new technology in manufacturing license plates. **Ms. Erickson** thought it would be tied together if both bills passed but referred again to the different effective dates of the two bills, one being immediate and the other January 1, 2002. **SEN. DEPRATU** said SB 191 could be amended in the House of Representatives to have it read "upon passage and approval", too. **Ms. Erickson** replied that this has not been done before because of the time it takes to gear up the manufacturing process, and asked **Dean Roberts** to address this issue. **Dean Roberts** said he did not see a problem with "passage and approval" since it would take between one and six months to get a plate on the market, but the Lewis & Clark plates would still be first on the market.

Vote: Motion that SB 393 DO PASS AS AMENDED carried 9-0.

ADJOURNMENT

Adjournment: 4:40 P.M.

SEN. ARNIE MOHL, Chairman

MARION MOOD, Secretary

AM/MM

EXHIBIT (his38aad)